

AMENDED IN SENATE JANUARY 30, 2006

AMENDED IN SENATE JUNE 23, 2005

AMENDED IN ASSEMBLY MAY 31, 2005

AMENDED IN ASSEMBLY MAY 12, 2005

AMENDED IN ASSEMBLY MAY 10, 2005

AMENDED IN ASSEMBLY APRIL 25, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1316

**Introduced by Assembly Members Salinas and Cohn
(Coauthor: Assembly Member Parra)**

February 22, 2005

~~An act to add Section 129772 to, and to add and repeal Section 129771 of, the Health and Safety Code, relating to health facilities, and declaring the urgency thereof, to take effect immediately. An act to amend Section 32128 of the Health and Safety Code, relating to health facilities.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1316, as amended, Salinas. ~~Health facilities: construction. Hospital districts: hospital rules: indemnification.~~

The existing Local Health Care District Law prescribes procedures for the formation and organization of hospital districts, and specifies the powers and duties of those districts. The law requires that the rules of a hospital, established by the board of directors, include specified provisions pertaining to the operation of the hospital and appointment of hospital medical staff, as provided.

This bill would additionally require that those rules include a provision for indemnification for damages and for costs associated with the legal defense of any nonemployee member of the medical staff when named as a defendant in a civil action directly arising out of opinions rendered, statements made, or actions taken as a necessary part of participation in the medical peer review activities of the district, as specified. By imposing new duties on hospital districts with respect to the implementation of new rules in hospitals, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~The Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983 requires the Office of Statewide Health Planning and Development (OSHPD) to assume duties relating to construction and alteration of hospital buildings, including, but not limited to, review and approval of construction plans, in order to ensure that the buildings would be reasonably capable of providing services after a disaster.~~

~~This bill would, until January 1, 2012, authorize a district hospital governing board to retain qualified design professionals who meet prescribed criteria to develop its plan prior to submitting it to OSHPD. The bill would require OSHPD to establish an accelerated review criteria and would require the adoption of related emergency processes, including, but not limited to, adoptions of emergency regulations implementing these reforms, and would require an annual report to the Legislature by January 1, 2007.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) The participation of nonemployee members of hospital*
4 *medical staff in the medical peer review activities of hospitals is*
5 *critical to preserving the highest standards of hospital medical*
6 *practice and patient care.*

7 *(b) Participation in medical peer review activities exposes*
8 *nonemployee members of the health care district medical staff to*
9 *the risk of involvement in civil actions arising out of those peer*
10 *review activities.*

11 *(c) California hospitals have traditionally provided*
12 *nonemployee physicians, serving as members of hospital peer*
13 *review committees, with indemnification for damages and for*
14 *costs associated with the legal defense of civil actions arising out*
15 *of their peer review activities. However, a recent Attorney*
16 *General's Opinion calls into question the specific authority of*
17 *health care districts, pursuant to the local Health Care District*
18 *Law (Division 23 (commencing with Section 32000) of the Health*
19 *and Safety Code), to provide this indemnification.*

20 *(d) The risks and costs of involvement in litigation would make*
21 *it extremely difficult for health care districts to obtain the*
22 *participation of nonemployee members of their hospital medical*
23 *staff in peer review activities. The loss of active peer review*
24 *bodies would render district hospitals ineligible for certification*
25 *by the Joint Commission on the Accreditation of Hospitals and*
26 *Health Care Organizations, threaten district hospitals' contracts*
27 *with liability insurance carriers, and their status as Medicare*
28 *providers, and could potentially invalidate their contracts with*
29 *numerous health plans.*

30 *(e) To ensure that nonemployee members of the medical staff*
31 *will continue to participate in the medical peer review activities*
32 *of health care districts, it is necessary for districts to provide*
33 *conditional indemnification for damages and for costs associated*
34 *with the legal defense of civil actions arising out of participation*
35 *in those peer review activities.*

36 *SEC. 2. Section 32128 of the Health and Safety Code is*
37 *amended to read:*

1 32128. (a) The rules of the hospital, established by the board
2 of directors pursuant to this article, shall include all of the
3 following:

4 (1) Provision for the organization of physicians and surgeons,
5 podiatrists, and dentists licensed to practice in this state who are
6 permitted to practice in the hospital into a formal medical staff,
7 with appropriate officers and bylaws and with staff appointments
8 on an annual or biennial basis.

9 (2) Provision for a procedure for appointment and
10 reappointment of medical staff as provided by the standards of
11 the Joint Commission on Accreditation of Healthcare
12 Organizations.

13 (3) Provisions that the medical staff shall be self-governing
14 with respect to the professional work performed in the hospital;
15 that the medical staff shall meet in accordance with the minimum
16 requirements of the Joint Commission on Accreditation of
17 Healthcare Organizations; and that the medical records of the
18 patients shall be the basis for such review and analysis.

19 (4) Provision that accurate and complete medical records be
20 prepared and maintained for all patients.

21 For purposes of this paragraph medical records include, but are
22 not limited to, identification data, personal and family history,
23 history of present illness, physical examination, special
24 examinations, professional or working diagnoses, treatment,
25 gross and microscopic pathological findings, progress notes, final
26 diagnosis, condition on discharge, and other matters as the
27 medical staff shall determine.

28 (5) Limitations with respect to the practice of medicine and
29 surgery in the hospital as the board of directors may find to be in
30 the best interests of the public health and welfare, including
31 appropriate provision for proof of ability to respond in damages
32 by applicants for staff membership, as long as no duly licensed
33 physician and surgeon is excluded from staff membership solely
34 because he or she is licensed by the Osteopathic Medical Board
35 of California.

36 (6) *Provision for indemnification for damages and for costs*
37 *associated with the legal defense of any nonemployee member of*
38 *the medical staff when named as a defendant in a civil action*
39 *directly arising out of opinions rendered, statements made, or*
40 *actions taken as a necessary part of participation in the medical*

1 *peer review activities of the district. This provision for*
2 *indemnification for damages shall not include any award of*
3 *punitive or exemplary damages against any nonemployee*
4 *member of the medical staff. If the plaintiff prevails in a claim for*
5 *punitive or exemplary damages against a nonemployee member*
6 *of the medical staff, the defendant shall be liable to the district*
7 *for all the costs incurred in providing representation to the*
8 *defendant.*

9 (b) The rules of the hospital shall, insofar as consistent with
10 this article, be in accord with and contain minimum standards not
11 less than the rules and standards of private or voluntary hospitals.
12 Unless specifically prohibited by law, the board of directors may
13 adopt other rules which could be lawfully adopted by private or
14 voluntary hospitals.

15 *SEC. 3. If the Commission on State Mandates determines that*
16 *this act contains costs mandated by the state, reimbursement to*
17 *local agencies and school districts for those costs shall be made*
18 *pursuant to Part 7 (commencing with Section 17500) of Division*
19 *4 of Title 2 of the Government Code.*

20 ~~SECTION 1. Section 129771 is added to the Health and~~
21 ~~Safety Code, to read:~~

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24 **All matter omitted in this version of the bill**
25 **appears in the bill as amended in the**
26 **Senate, June 23, 2005 (JR11)**
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